

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

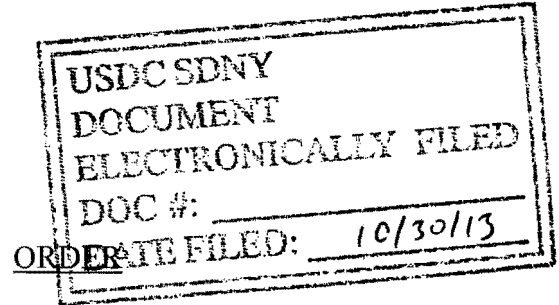
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BANK OF MONTREAL,

Plaintiff,

-against-

OPTIONABLE, INC., MF GLOBAL, INC.,
KEVIN CASSIDY, EDWARD O'CONNOR,
MARK NORDLICHT, RYAN WOODGATE,
SCOTT CONNOR, and JOSEPH SAAB,

Defendants.
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09 Civ. 7557 (GBD) (JLC)

JAMES L. COTT, United States Magistrate Judge.

For the reasons set forth on the record at today's conference, the Court made the following rulings:

1. Defendants' motion to compel the deposition of BMO chief executive officer William Downe is denied without prejudice. Defendants may renew their motion at a later date upon the completion of lower-level BMO employees' depositions, when they are in a better position to articulate the unique information that they believe Downe has to offer. On the present record, the Court cannot determine whether or not Downe has sufficient personal knowledge of the underlying facts of this action to warrant his deposition. Downe's October 23rd declaration submitted in opposition to the motion to compel his deposition states (in paragraph 9): "The information I have concerning the subject matter of the Litigation – including the information that I obtained while President and CEO and in my earlier roles within BMO – was obtained from others, including lawyers, lower-level BMO employees, and individuals outside the bank."¹ I direct BMO to identify to all parties forthwith the "lower-level BMO employees" and "individuals outside the bank" referred to in paragraph 9 of the Downe Declaration so Defendants can determine which, if any, of them they wish to depose.
2. The application related to whether Defendants may take more than 10 depositions is deferred to a later date.
3. BMO is hereby directed to make the five BMO employees identified by BMO counsel at today's conference available for deposition in the month of November (excluding Thanksgiving Day).

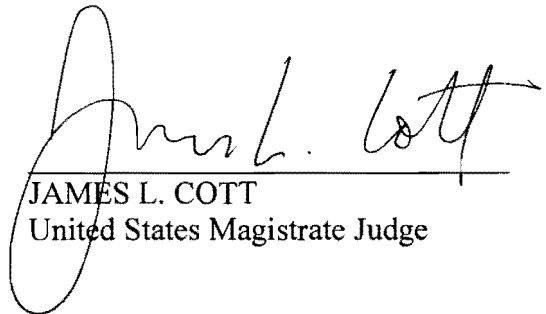
¹ BMO is directed to file the Declaration of William A. Downe dated October 23, 2013 and make it part of the record in this case (even though the letter to which it is attached need not be filed at this time as it is designated to include confidential material).

USDC SDNY
DATE SCANNED: 10/30/13

4. The parties are directed to hold a further meet and confer the week of December 2 to discuss, *inter alia*, the number of additional depositions that Defendants wish to take of BMO witnesses, and, depending on the November depositions, whether BMO will voluntarily make Downe available for deposition.
5. The next case management conference will be held on December 11 at 10 a.m. Any submissions to the Court as to these or other issues must be made no later than December 4 by 5 p.m.

SO ORDERED.

Dated: New York, New York
October 30, 2013



JAMES L. COTT
United States Magistrate Judge